

of a copy of the recipient's authorization to receive and possess the material to be exported or a confirmation from the government of the importing country that the recipient is so authorized. The recipient authorization shall include the following information:

- (1) Name of the recipient
- (2) Recipient location and legal address or principal place of business
- (3) Relevant radionuclides and radioactivity being imported or that the recipient is authorized to receive and possess
- (4) Uses, if appropriate
- (5) The expiration date of the recipient's authorization (if any)

[49 FR 47200, Dec. 3, 1984, as amended at 58 FR 13004, Mar. 9, 1993. Redesignated at 59 FR 48998, Sept. 26, 1994; 60 FR 37564, July 21, 1995; 65 FR 70291, Nov. 22, 2000; 70 FR 37991, July 1, 2005]

Subpart D—Review of License Applications

§ 110.40 Commission review.

(a) Immediately after receipt of a license application for an export or import requiring a specific license under this part, the Commission will initiate its licensing review and, to the maximum extent feasible, will expeditiously process the application concurrently with any applicable review by the Executive Branch.

(b) The Commissioners shall review a license application for export of the following:

- (1) A production or utilization facility.
- (2) More than one effective kilogram of high-enriched uranium, plutonium or U-233.
- (3) Nuclear grade graphite for nuclear end use.
- (4) 1,000 kilograms or more of deuterium oxide (heavy water), other than exports of heavy water to Canada.
- (5) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors, or the fabrication of nuclear fuel containing plutonium, except for exports of source material or low-enriched uranium to EURATOM or Japan for enrichment up to 5 percent in the isotope uranium-235, and those categories of exports which

the Commission has approved in advance as constituting permitted incidental assistance.

(6) The initial export to a country since March 10, 1978 of source or special nuclear material for nuclear end use.

(7) An export involving over:

- (i) 10 grams of plutonium, U-233 or high-enriched uranium;
- (ii) 1 effective kilogram of low-enriched uranium;
- (iii) Nuclear grade graphite for nuclear end use;
- (iv) 250 kilograms of source material or heavy water; or
- (v) 1,000 curies of tritium, to any country listed in § 110.28 or § 110.29.

(8) Any export subject to special limitations as determined by the staff or a majority of the Commissioners.

(c) If the Commission has not completed action on a license application within 60 days after receipt of the Executive Branch judgment, as provided for in § 110.41, or the license application when an Executive Branch judgment is not required, it will inform the applicant in writing of the reason for delay and, as appropriate, provide followup reports.

[43 FR 21641, May 19, 1978, as amended at 45 FR 51184, Aug. 1, 1980; 49 FR 47200, Dec. 3, 1984; 58 FR 13004, Mar. 9, 1993; 60 FR 37564, July 21, 1995; 70 FR 41939, July 21, 2005]

EDITORIAL NOTE: At 70 FR 37992, July 1, 2005, § 110.40 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction. At 70 FR 46066, August 9, 2005, the July 1, 2005 amendment was corrected; however, the correction could not be incorporated due to inaccurate amendatory instruction.

§ 110.41 Executive Branch review.

(a) An application for a license to export the following will be promptly forwarded to the Executive Branch for review:

- (1) A production or utilization facility.
- (2) More than one effective kilogram of high-enriched uranium or 10 grams of plutonium or U-233.
- (3) Nuclear grade graphite for nuclear end use.
- (4) More than 3.7 TBq (100 curies) of tritium, and deuterium oxide (heavy water), other than exports of heavy water to Canada.

Nuclear Regulatory Commission

§ 110.42

(5) One kilogram or more of source or special nuclear material to be exported under the US-IAEA Agreement for Co-operation.

(6) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors, or the fabrication of nuclear fuel containing plutonium, except for exports of source material or low-enriched uranium to EURATOM and Japan for enrichment up to 5 percent in the isotope uranium-235, and those categories of exports approved in advance by the Executive Branch as constituting permitted incidental assistance.

(7) The initial export of nuclear material or equipment to a foreign reactor.

(8) An export involving radioactive waste.

(9) An export to any country listed in § 110.28 or § 110.29.

(10) An export subject to special limitations as determined by the Commission or the Executive Branch.

(b) The Executive Branch will be requested to:

(1) Provide its judgment as to whether the proposed export would be inimical to the common defense and security, along with supporting rationale and information.

(2) Where applicable, confirm that the proposed export would be under the terms of an agreement for cooperation; and

(3) Address the extent to which the export criteria in § 110.42 are met, if applicable, and the extent to which the recipient country or group of countries has adhered to the provisions of any applicable agreement for cooperation.

(c) The Commission may request the Executive Branch to address specific concerns and provide additional data and recommendations as necessary.

[43 FR 21641, May 19, 1978, as amended at 49 FR 47200, Dec. 3, 1984; 58 FR 13004, Mar. 9, 1993; 60 FR 37564, July 21, 1995; 61 FR 35602, July 8, 1996; 70 FR 41939, July 21, 2005; 70 FR 37992, July 1, 2005; 70 FR 46066, August 9, 2005]

§ 110.42 Export licensing criteria.

(a) The review of license applications for export for peaceful nuclear uses of

production or utilization facilities¹ or for export for peaceful nuclear uses of special nuclear or source material requiring a specific license under this part is governed by the following criteria:

(1) IAEA safeguards as required by Article III (2) of the NPT will be applied with respect to any such facilities or material proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material or facilities proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such material or facilities, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Physical security measures will be deemed adequate if such measures provide a level of protection equivalent to that set forth in § 110.44.

(4) No such material or facilities proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other country or group of countries unless the prior approval of the United States is obtained for such retransfer.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such

¹Exports of nuclear reactors, reactor pressure vessels, reactor primary coolant pumps, "on-line" reactor fuel charging and discharging machines, and complete reactor control rod systems, as specified in paragraphs (1) through (4) of appendix A to this part, are subject to the export licensing criteria in § 110.42(a). Exports of nuclear reactor components, as specified in paragraphs (5) through (9) of appendix A to this part, when exported separately from the items described in paragraphs (1) through (4) of appendix A of this part, are subject to the export licensing criteria in § 110.42(b).